IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.229 OF 1989

The State of Maharashtra).. .. Appellant

Versus

1. Balu Kondiba Bhise)
age 23 yrs. Occupation)
Agriculture.)
2. Thakubai Kondiba Bhise)
age 55 yrs. Occupation)
Agriculture.)
Both residing at Kasurji)
Bhise Vasti, Tal.Yavat)
District Pune.).. .. Respondents

Mr. B.H.Mehta, APP for Appellant.

Mr. C.D.Konale, Advocate fo Respondent No.1.

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 7TH APRIL, 2005

ORAL JUDGMENT : (Per Kakade, J.)

1. The State has filed this appeal against the judgment and order passed by the Additional Sessions Judge, Pune on 15th December, 1988 acquitting the accused persons of the charges so far as the offence punishable under Sections 498-A and 304-A of the Indian Penal Code. Out of both, the appellant no.2 has died pending the appeal, therefore, the appeal against the appellant no.2 abates.

2. The facts involved in the case in brief are thus-

3. Deceased Bhamabai was the wife of accused No.1. Accused No.2 was the mother of accused no.1. She was the daughter of P.W. Sahebrao and Kamlabai. Marriage between accused No.1 and deceased Bhamabai had taken place about two years prior to the incident. It is the

case of the prosecution that prior to the marriage certain negotiations had taken place between the relatives of both sides that dowry amount of Rs.3500/= would be paid to the accused. Out of which Rs.3000/= were paid in cash prior to the marriage. However, Rs.500/= remained to be paid. The prosecution case is that the deceased Bhamabai used to complain to her parents as and when they used to meet, after her marriage, that she was being ill-treated and harassed by the accused as remaining dowry amount of Rs.500/= was still to be paid. She used to insist her parents always that the said amount be paid immediately. It is the case of the prosecution that even on the prior day of the incident she had met her mother Kamlabai and asked her to pay remaining amount of dowry. Ultimately on 8.3.1988 a message was received by the parents of deceased Bhamabai that she was brought in serious condition to Yavat Primary Health Centre. They rushed there. They found that their daughter Bhamabai was already dead. Medical Officer attached to Primary Health Centre at that time immediately contacted to Police Station and gave information about the death of the deceased Bhamabai. Post mortem was duly conducted. After inquest panchanama offence came to be registered

regarding the incident. It was found that the deceased had died due to poisoning. Father of the deceased, after due deliberations with the villagers filed complaint against the accused persons, as a result of which the offence came to be registered against the accused persons for commission of offence punishable under Section 498-A and 304-A of Indian Penal Code. Investigation commenced, in which course the statement of witnesses came to be recorded and panchanama of scene of offence was prepared. The articles seized in the course of investigation were sent to C.A. for analysis, whose report was received and is part of the record. On completion of the investigation charge-sheet was sent to the court of law.

4. The learned Magistrate committed the case to the Court of Sessions. The learned Addl. Sessions Judge framed the charges against the accused for the impugned offences, to which they pleaded not guilty. The defence of the accused persons was that of total denial of any criminal liability. Both the accused persons categorically denied that they subjected deceased Bhamabai to any cruelty. They also refused to acknowledge the allegation that the dowry amount was

decided to be paid by parents of Bhamabai and she was subjected to cruelty due to non payment of part of dowry amount. The learned trial judge proceeded to record the evidence of the prosecution witnesses on which basis he came to the conclusion that the prosecution failed to establish the guilt of both the accused persons, and therefore, concluded that they would be entitled to benefit of doubt and came to be acquitted of the charges. Hence the present appeal.

5. We have heard the learned APP as well as the learned counsel for the respondent at length. We have also perused the entire evidence on record with the assistance of both the learned counsel.

. At the outset it may be noted that offence under Section 498-A of I.P.C. reads to the effect that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be committing the offence under the said Section. Section 304-B deals with dowry deaths whereunder the prosecution is required to establish that the death of a woman is caused by any means otherwise than under normal circumstances within seven years of her marriage and it

is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. In this regard in the present case the prosecution has also taken recourse of the provision of Section 113(b) of the Evidence Act in order to raise presumption against the accused persons contemplated under the said provision as the death has occurred within seven years i.e. after two years of marriage of Bhamabai. However, it is needless to mention that such presumption could be available to the prosecution only when question is whether person has committed the dowry death of woman and it is shown that soon before her death such woman has been subjected to such cruelty or harassment for, or in connection with, any demand of dowry. Therefore, the perusal of these provisions would show that common factor required to be established by the prosecution is that the evidence must be sufficient to show that the deceased wife was subjected to cruelty or harassment on the ground of dowry itself.

6. In support of this aspect the prosecution has examined both the parents of the deceased as well as other witnesses, including distant uncle of the

deceased, who was living in her neighbourhood and was in fact a middleman to settle the marriage between the parties.

. The evidence of P.W.1 as well as P.W.4, the parents of the deceased, shows that Bhamabai was their eldest daughter and she was married to accused about one year or soon prior to her death. According to them the amount of Rs.3500/= was agreed to be given as dowry in marriage to accused No.1 and out of which amount of Rs.3000/= was paid to the accused and remaining amount of Rs.500/= was due to be payable. It is the case of the prosecution that both the accused used to ill-treat and harass the deceased by making constant demand of remaining amount of Rs.500/= and when it was not paid, the deceased used to complain to her parents about the ill-treatment, harassment at the hands of the accused persons. Evidence of P.W. 1 shows that on 8.3.1988 he was informed that his daughter was serious and therefore, they proceeded to the hospital at Yavat. P.W.1 Sahebrao, father along with P.W.4 Kamalabai, mother, with two/three relatives proceeded there. On reaching there they saw the dead body of their daughter was lying in the hospital. Police had prepared inquest

panchanama and took away the dead body for post mortem. In his examination-in-chief Sahebrao has stated that he was not allowed to attend the funeral ceremony. However, in his cross-examination he has admitted that since the body was being taken in the jeep, they were asked by the police not to accompany them and therefore they could not go with the body. The case of witness Sahebrao that they were not allowed to attend the funeral is negated by the evidence of P.W.3, uncle of deceased, who has stated in the course of cross-examination that he was present for funeral ceremony and in fact they had waited for two hours for parents of Bhamabai but they did not come and therefore, funeral ceremony was completed. Therefore, the allegation that he was not allowed to attend the funeral ceremony cannot be considered as correct position.

. So far as allegations regarding alleged cruelty are concerned, father Sahebrao has stated that Bhamabai used to make grievance that she was being ill-treated for remaining amount of dowry of Rs.500/= by the accused persons. No details of ill-treatment or harassment are available either from father Sahebrao or P.W.4 Kamalabai, mother, except that Bhamabai was subjected to

ill-treatment and used to make complaint whenever she visited the parents. However, in the same breath P.W.1 Sahebrao had admitted that during the time of festival he and his wife used to visit the house of the accused. They also used to halt at their house many a times as and when they visited the house for such purpose. Sahebrao has further stated that he used to visit his daughter's house once in a month or two and his wife also used visit accordingly. This aspect is also supported by P.W.4 Kamalabai, therefore, it is obvious that the relations between two families were absolutely cordial. Surprisingly enough, both the witnesses have kept silent whether the question of payment of remaining amount of dowry was raised by the accused persons during their visit to the house of the accused or when they visited the house of Sadashiv frequently. If it was so then the allegations regarding harassment and ill-treatment lose substance.

7. The position is further aggravated against the prosecution by the evidence of P.W.2 who is not only distant uncle of deceased Bhamabai but also was living in neighbourhood of Bhamabai. In fact he had acted as a middleman while settling the marriage. He has stated in

his evidence that after marriage deceased and he used to meet each other once in a fortnight. Accused No.1 also used to meet him during such period. However, the deceased Bhamabai did not make any complaint against accused persons to anybody or to him and accused also did not open any subject about any grievance as such. In the evidence of Sadashiv Jagtap it has also come that he has acted as a mediator while settling the marriage and Bhamabai was fair looking and beautiful as against accused no.1 who was having dark complexion and therefore, it was suggested by the brother of the accused no.1 that no dowry was required as girl was beautiful and they would be satisfied if the marriage ceremony is performed properly. On the point of payment of dowry amount also witness Sadashiv has given different version from that of P.W.1 Sahebrao and P.W.4 Kamalabai. P.W.1 in his examination in chief has stated that the amount of Rs.3000/- was paid at the time of marriage. However, in the cross-examination he has changed this version to the effect that the amount was paid at the time of engagement, which had taken place two months prior to the marriage. As against this P.W. 4 Kamalabai has stated that the amount was paid to the accused one day prior to the marriage. Both these

witnesses stated that it was paid through witness Sadashiv. However, Sadashiv flatly refused to say that he was involved in making payment to persons in any manner whatsoever. In this regard it must be noted that evidence of witness Sadashiv appears to be more credible and trustworthy as against the parents of deceased for more than one reason. Firstly there is nothing on record to show that why he should said false against the other witnesses and his own relatives. Secondly it must be noted that he had more reason to be interested in welfare of the deceased Bhamabai as he was not only her uncle but also a mediator for settlement of marriage and therefore, obviously had more responsibility to see that deceased was properly treated at her own house by the accused persons, who were residing in the neighbourhood itself. As against this the evidence of P.W.1 and P.W.4 shows that complaint was filed by them only after deliberations and negotiations with leaders of villagers. In fact it has come in the evidence of P.W.4 that villagers came to their house and meeting took place there and it was decided that the complaint shall be lodged to the police. Decision took place there as to what shall be stated to the police and accordingly P.W.4 gave statement to the police. One application was

prepared by the villagers. She has also stated that she had not given any information regarding the contents of the application, however, at the same time evidence of P.W.1 shows that in fact such meeting took place wherein it was decided that the complaint should be filed against the accused persons. This clear scenario is sufficient to show that the idea of filing complaint was not voluntary and on the part of the complaint i.e. father of the deceased but it was a collective will of the leaders of the village after due deliberations and therefore, if this aspect is considered in juxta position with the available evidence on record, as noted above, it is difficult to belive that there was infact any ill-treatment or harassment to the deceased Bhamabai at the hands of the accused persons so as to lead her to commit suicide.

8. The learned APP brought to our notice several aspects from the evidence on which it was submitted that those were sufficient to prove the guilt of the accused persons for incident. It was pointed out that P.W. 1 Sahebrao did say that he was not allowed to attend the funeral ceremony. However, if we peruse the surrounding situation, as noted earlier, it is clear that accused

persons did not prevent the parents from attending the funeral. Similarly, in the course of evidence P.W. 4 Kamalabai has stated that deceased Bhamabai used to complain to her about harassment and ill-treated, however at the same time she had acknowledged the fact that both the families were on visiting terms to each other during which time there was not even a mention either of ill-treatment or harassment or question of payment of remaining amount of so called dowry. Therefore, we are satisfied, on the basis of available evidence, that it is not sufficient to bring home the guilt to find accused persons guilty of offences with which they are charged.

9. On perusal of the judgment of the lower court we are satisfied that the entire evidence is taken into account and is duly appreciated. It is well settled principles of criminal law that whenever two aspects emerged from the evidence, one in favour of the accused and one against him, the one set of facts which is in favour of the accused has to be accepted and benefit of doubt is required to be given. In this case no doubt there are certain aspects, which are prone to raise suspicion with regard to the conduct of the accused

persons, however, those are not substantiated by the evidence on record and such suspicion cannot take place of proof against the accused persons. In the result we hold that it is not fit case for interference by this Court and therefore, consequently the Appeal stands dismissed. The bail-bond of the accused stand cancelled.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)